REMARKS

Reconsideration of this application as amended is now being requested. Claims 1-20 are now in this application. Claims 1, 5, 8 and 20 have been amended.

Claims 5, 8 and 20 were objected to because of a number of informalities. Claims 5, 8 and 20 have been amended in the manner suggested by the office action.

Claims 1, 16 and 19 were rejected under 35 USC §102 as being anticipated by Razavilar et al (US Publication 2003/0104831). Specifically, the office action alleges that steps 612 and 614 discloses using a variable step to adjust a channel condition threshold, and that the channel condition threshold is associated with a modulation and coding scheme used in a first data packet transmission. Applicants respectfully traverse. First, Razavilar discloses reducing or increasing a target channel condition metric by a step size. It appears that such step size, whether the target channel condition is being reduced or increased, is the same step size and a fixed step size. Razavilar does disclose a variable step size. By contrast, claim 1 recites the limitation of "adjusting a first channel condition threshold ... using a first variable step."

Second, Razavilar discloses a target channel condition metric which depends on the Type of Service (ToS) of the signaling. See paragraph [0073] of Razavilar. By contrast, amended claim 1 recites the limitation of "wherein the first channel condition threshold is <u>based on</u> a first modulation and coding scheme (MCS) level used in the first data packet transmission." (underlined added) That is, the first channel condition threshold of claim 1 depends on the MCS level used in the first data packet transmission, not ToS of the signaling as disclosed in Razavilar. Support for amendment can be found at page 6, lines 23-30. Thus, for the reasons discussed above, it is felt that claim 1, as amended, is patentable under 35 USC §102 over Razavilar.
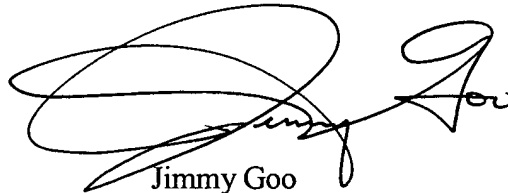
Claims 16 and 19 depend upon, and include all the limitations of, claim 1 and, thus, are also felt to be patentable under 35 USC §102 over Razavilar.

Claims 2, 4, 7, 10-13, 17-18 and 20 were rejected under 35 USC §103(a) as being unpatentable over Razavilar et al, and further in view of Shibutani (US Pub. 2002/0193133), Sindhushayana (US Pub. 2004/0202196) and/or Engstrom et al (US Patent 6,639,934). For the reasons discussed above with respect to claim 1, it is felt that Razavilar fails to disclose all the elements of claim 1, such as the variable step and first channel condition threshold adjusted based on MCS level. Nor is it felt that Shibutani, Sindhushayana or Engstrom disclose the elements of claim 1 not taught by Razavilar. Since claims 2, 4, 7, 10-13, 17-18 and 20 all depend from, and include all the limitations of, claim 1, it is felt that claims 2, 4, 7, 10-13, 17-18 and 20 are also patentable under 35 USC §103(a) over Razavilar et al, and further in view of Shibutani, Sindhushayana and Engstrom et al.

Claims 3, 5-6, 8-9 and 14-15 were objected to as being upon a rejected base claim but would have been allowable if rewritten into independent form. For the reasons discussed above with respect to claim 1, it is felt that claims 3, 5-6, 8-9 and 14-15 are allowable in their present form.

An one-month extension is due.

Respectfully submitted,

Sridhar Gollamudi

Pantelis Monogioudis

Jimmy Goo

Reg. No. 36,528

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Docket Administrator (Room 3J-219)
Lucent Technologies Inc.
101 Crawfords Corner Road
Holmdel, NJ 07733-3030